IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8611 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF CHHAGAN BAVA

Versus

STATE OF GUJARAT

Appearance:

MR JD AJMERA for Petitioners

MS MANISHA LAVKUMAR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. Having heard the learned counsel for the parties, I am satisfied that both the authorities below have not committed any illegality, whatsoever, in holding that the petitioners have no right, title, or interest,

whatsoever, in the land in dispute which belongs to the Government. It is a Government land and the petitioners have no right to continue their possession thereon.

2. The petitioners' case is that in the year 1954, this land has been allotted to them. The learned counsel for the petitioners has failed to show any document of the allotment of this land to them. The reliance placed on the entry in the revenue record has not been accepted by the authorities below and rightly so. The entry in the revenue record is to be made on the basis of some material. The learned counsel for the petitioners has failed to produce any material to justify this entry made in the revenue records of this land in favour of the petitioners. Concurrent finding of facts recorded by both the authorities are perfectly legal and justified in which no interference calls for. The learned counsel for the petitioners submits that the petitioners are in possession of the land for last more than 44 years and the respondent - State may be given direction to allot the same to them. I do not find any merits in this contention. In case, such a direction is given leaving apart the fact that these may be de hors of the provisions of the Act or Rules, it will encourage amongst the people to make encroachment upon the Government land which is already a settled practice amongst the citizens of the country. Lastly, the learned counsel for the petitioners submits that a reasonable time may be given to the petitioners to vacate this land. This prayer is opposed by the learned counsel for the respondents, but looking to the fact that the petitioners are in occupation of this land for last 44 years, if few months are granted to them to hand over the vacant possession thereof to the State Government, it will not adversely affect the respondent as well as public at large. If this course is adopted the respondent will get the possession on or before expiration of time, if granted by this court. Otherwise, it may be difficult to get the possession of this land from the petitioner by the respondent - State Government within reasonable time. It will also heavily costs to the State Government. So, grant of the time to the petitioners to vacate this land will serve public interest.

3. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated. However, the petitioners are granted one year time to hand over the vacant possession of this land to the respondent, State of Gujarat, on condition that they shall deposit Rs.100/- per month per acre and part

thereof towards the mesne profits for the use and occupation of the land. He shall file an undertaking in this court that he shall hand over the vacant possession of this land to the State Government on or before 11/07/2001. This undertaking is to be filed within a period of 15 days from the date of receipt of writ of this order. The petitioner to pay the costs of this petition to the respondent also.

(S.K. Keshote, J.)
(kamlesh)